CANADA

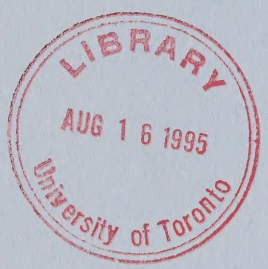
National Energy Board

Reasons for Decision

Brooklyn Navy Yard Cogeneration Partners, L.P.

Renaissance Energy Ltd.

GH-1-95



July 1995

Gas Exports

National Energy Board

Reasons for Decision

In the Matter of

Brooklyn Navy Yard Cogeneration Partners, L.P.

Renaissance Energy Ltd.

Applications Pursuant to Part VI of the *National Energy Board Act* for Licences to Export Natural Gas

GH-1-95

July 1995

Cat. No. NE22-1/1995-7E
ISBN 0-662-23584-3

This report is published separately in both official languages.

Copies are available on request from:
Regulatory Support Office
National Energy Board
311 Sixth Avenue S.W.
Calgary, Alberta
T2P 3H2
(403) 292-4800

For pick-up at the NEB office:
Library
Ground Floor

Printed in Canada

N° de cat. NE22-1/1995-7F
ISBN 0-662-80398-1

Ce rapport est publié séparément dans les deux langues officielles.

Exemplaires disponibles sur demande auprès du :
Bureau du soutien à la réglementation
Office national de l'énergie
311, sixième avenue s.-o.
Calgary (Alberta)
T2P 3H2
(403) 292-4800

En personne, au bureau de l'Office :
Bibliothèque
Rez-de-chaussée

Imprimé au Canada

Table of Contents

List of Tables iii

List of Figures iii

List of Appendices iii

Abbreviations iv

Recital and Appearances vi

1. Part VI - Gas Export Licence Applications 1
1.1 The Applications 1

2. Market-Based Procedure 2
2.1 Public Hearing Component 2
2.1.1 Complaints Procedure 2
2.1.2 Export Impact Assessment 3
2.1.3 The Other Public Interest Considerations 4
2.2 Ongoing Monitoring 6
2.2.1 Assessment of Canadian Energy Supply and Demand 7
2.2.2 Natural Gas Market Assessment 7
2.3 Summary of the Market-Based Procedure 7

3. Intervenor Participation 9
3.1 Intervenor Assistance 9
3.2 Intervenor Procedures 9

4. Motions and Rulings 10
4.1 Introduction 10
4.2 Motions on Preliminary Matters 10
4.3 Motion to Separate Hearing of the Applications 13

5. Brooklyn Navy Yard Cogeneration Partners, L.P. 14
5.1 Application Summary 14
5.2 Gas Supply 15
5.2.1 Supply Sources 15
5.2.2 Reserves 15
5.2.3 Productive Capacity 16
5.3 Transportation 18
5.4 Market 18
5.5 Gas Sales Contracts 19
5.6 Status of Regulatory Authorizations 20
5.7 Application of the Market-Based Procedure 20
5.7.1 Complaints Procedure 20

5.7.2 Export Impact Assessment 20
5.7.3 The Other Public Interest Considerations 22
5.7.3.1 Upstream Environmental Effects 22
5.7.3.2 Externalities 22

6. Renaissance Energy Ltd. 27
6.1 Application Summary 27
6.2 Gas Supply 27
6.2.1 Supply Sources 27
6.2.2 Reserves 27
6.2.3 Productive Capacity 28
6.3 Transportation 29
6.4 Market 29
6.5 Gas Sales Contract 30
6.6 Status of Regulatory Authorizations 30
6.7 Application of the Market-Based Procedure 31
6.7.1 Complaints Procedure 31
6.7.2 Export Impact Assessment 31
6.7.3 The Other Public Interest Considerations 32
6.7.3.1 Upstream Environmental Effects 32
6.8 Sunset Clause 32

7. Disposition 36

List of Tables

1-1 Summary of Applied-for Licences 1

5-1 Comparison of Estimates of Navy Yard Partners' Established Gas Reserves with the Applied-for Term Volume and Total Requirements 15

6-1 Comparison of Renaissance's Established Gas Reserves with the Applied-for Term Volume 28

List of Figures

5-1 Comparison of Crestar's and NEB's Estimates of Annual Productive Capacity 17

5-2 Comparison of PanCanadian's and NEB's Estimates of Annual Productive Capacity 17

6-1 Comparison of Renaissance's and NEB's Estimates of Annual Productive Capacity 29

List of Appendices

Terms and Conditions of the Licences to be Issued 37

Abbreviations

Act	*National Energy Board Act*
AEUB	Alberta Energy and Utilities Board
AWA	Alberta Wilderness Association
Bcf	billion cubic feet
Board	National Energy Board
BUG	Brooklyn Union Gas Company
Con Edison	Consolidated Edison Company of New York, Inc.
Crestar	Crestar Energy
Delmarva	Delmarva Power & Light Company
DOE/FE	(United States of America) Department of Energy, Office of Fossil Energy
EARP Guidelines Order	*Environmental Assessment Review Process Guidelines Order*
EIA	Export Impact Assessment
FERC	(United States of America) Federal Energy Regulatory Commission
FS	firm service
GAIA	Green Alternatives Institute of Alberta
GH-3-94	Reasons for Decision in GH-3-94
GH-5-93 Review	NEB Review of its decision in GH-5-93
GHR-1-87	*Review of Natural Gas Surplus Determination Process*
GJ	gigajoule(s)
IGTS	Iroquois Gas Transmission System, L.P.
Lilco	Long Island Lighting Company
MAQ	Maximum Annual Quantity

MBP	Market-Based Procedure
MDQ	Maximum Daily Quantity
MMBtu	million Btu
MMcf	million cubic feet
MW	megawatt (1000 kilowatts)
National Fuel	National Fuel Gas Supply Corporation
Navy Yard Partners	Brooklyn Navy Yard Cogeneration Partners, L.P.
NEB	National Energy Board
NGMA	Natural Gas Market Assessment
NLS	Northern Light Society
NOVA	NOVA Corporation of Alberta
PanCanadian	PanCanadian Petroleum Limited
Regulations	*National Energy Board Part VI Regulations*
Renaissance	Renaissance Energy Ltd.
Renaissance (U.S.)	Renaissance Energy (U.S.) Inc.
RMEC	Rocky Mountain Ecosystem Coalition, Speak Up for Wildlife Foundation and Diamond Hitch Outfitters
section 118	section 118 of the *National Energy Board Act*
TransCanada	TransCanada PipeLines Limited
Transco	Transcontinental Gas Pipeline Corp.
Trends and Issues	NEB report entitled *Canadian Energy Supply and Demand 1993-2010 - Trends and Issues*
Technical Report	NEB report entitled *Canadian Energy Supply and Demand 1993-2010 - Technical Report*
Unconnected Gas Study	NEB report entitled *Unconnected Gas Supply Study - Phase I Evaluation of Unconnected Reserves in Alberta*
WCSB	Western Canada Sedimentary Basin
WCWC	Western Canada Wilderness Committee

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder;

AND IN THE MATTER OF an application dated 23 February 1995 by Brooklyn Navy Yard Cogeneration Partners, L.P. for a licence authorizing the export of natural gas, as amended; and an application dated 23 February 1995 by Renaissance Energy Ltd. for a licence authorizing the export of natural gas; and

AND IN THE MATTER OF Hearing Order GH-1-95, as amended;

HEARD at Calgary, Alberta on 29 to 31 May and 1 to 6 June 1995.

BEFORE:

K.W. Vollman	Presiding Member
A. Côté-Verhaaf	Member
J.A. Snider	Member

APPEARANCES:

L.E. Smith P.T. Maguire	Brooklyn Navy Yard Cogeneration Partners, L.P.
D.G. Davies	Renaissance Energy Ltd.
P. Armstrong	Alberta Coalition of Concerned Citizens
M.A. Oldershaw	Alberta Greens
E. Wolf	Alberta Ratepayers Association and Native Canadian Petroleum Association
V. Pharis	Alberta Wilderness Association
N.J. Schultz	Canadian Association of Petroleum Producers
A. Munz	Green Alternatives Institute of Alberta
A. Johnstone	Northern Environmental Patriots

Dr. S. Baldwin S. Harrison	Northern Light Society
M. Sawyer Dr. Horejsi	Rocky Mountain Ecosystem Coalition, Speak Up for Wildlife Foundation and Diamond Hitch Outfitters
P. Abramowicz	Western Canada Wilderness Committee
A.R. Kerr	Amoco Canada Petroleum Company Ltd.
N.G. Sauder	Crestar Energy
M.A.K. Muir	ProGas Limited
D.W. Rowbotham	Suncor Inc.
G.W. Toews	Western Gas Marketing Limited
D. Crowe	On his own behalf
D. Munroe	On his own behalf
P. McCunn-Miller	Alberta Department of Energy
J. Hanebury C. Beauchemin	Board Counsel

Chapter 1

Part VI - Gas Export Licence Applications

1.1 The Applications

During the GH-1-95 proceeding, the National Energy Board (the "Board" or "NEB") examined two applications for gas export licences from the following parties:

1. Brooklyn Navy Yard Cogeneration Partners, L.P. ("Navy Yard Partners"); and
2. Renaissance Energy Ltd. ("Renaissance").

Table 1-1 provides a summary of the applications.

Table 1-1
Summary of Applied-for Licences

Application	Buyer (Type of market)	Term	Export Point	Maximum Quantities Applied For		
				Daily 10^3m^3 (MMcf)	Annual 10^6m^3 (Bcf)	Term 10^6m^3 (Bcf)
1. Navy Yard Partners*	Navy Yard Partners (cogen. plant)	5 years from 1 October 2011	Iroquois, Ontario	750.0 (26.5)	274.0 (9.7)	1 370.0 (48.5)
2. Renaissance	Delmarva (system supply)	Issuance of licence to 1 Nov. 2004	Niagara Falls, Ontario	79.3 (2.8)	28.9 (1.0)	289.6 (10.2)

*Navy Yard Partners initially applied for a new licence for a term of five years, to commence upon the expiration of Licence GL-232, which was issued following the GH-5-93 proceeding. Navy Yard Partners subsequently amended its application to apply for an amending order to Licence GL-232, to extend the term by five years and to increase the term volume by 1 370.0 10^6m^3 (48.5 Bcf).

Chapter 2

Market-Based Procedure

The Board, in considering an export application, must take into account section 118 ("section 118") of the *National Energy Board Act* ("Act"), which requires the Board to have regard to all considerations that appear to it to be relevant. In particular, the Board must satisfy itself that the quantity of gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada.

In July 1987, pursuant to a *Review of Natural Gas Surplus Determination Procedures* ("GHR-1-87"), the Board implemented a procedure, known as the Market-Based Procedure ("MBP"), founded on the premise that the marketplace would generally operate in such a way that Canadian requirements for natural gas would be met at fair market prices.[1]

The MBP provides that the Board will act in two ways to ensure that natural gas to be licensed for export is both surplus to reasonably foreseeable Canadian requirements and in the public interest: it will hold public hearings to consider applications for licences to export natural gas and it will monitor Canadian energy markets on an ongoing basis.

2.1 Public Hearing Component

The public hearing component of the MBP provides that the Board consider:

- complaints, if any, under the Complaints Procedure;
- an Export Impact Assessment ("EIA"); and
- any other considerations that the Board deems relevant to its determination of the public interest.

The following description of these three components is general in nature and applies to each application heard in GH-1-95.

2.1.1 Complaints Procedure

The basic premise of the Complaints Procedure is that, in a market which is working satisfactorily, Canadian purchasers will be able to obtain domestic natural gas supplies under contract on terms and conditions, including price, similar to those offered to purchasers under the proposed export arrangements. In order to test whether the market is in fact working in this manner, in the GHR-1-87 Decision the Board stated that:

[1] The MBP was modified following subsequent public hearings GHW-4-89 and GHW-1-91. The modifications did not affect the above-noted premise on which the MBP was founded.

> "The inclusion of a complaints mechanism in the new surplus determination procedures is based on the principle that gas should not be authorized for export if Canadian users have not had an opportunity to buy gas for their needs on terms and conditions similar to those of the proposed export. Applicants for export licences will have to be prepared to address any concerns on this score which may be identified in the complaints procedure ...."

The Complaints Procedure seeks to ensure that Canadian gas buyers who have been active in the market have access to gas on terms and conditions no less favourable than export customers. The Complaints Procedure enables these buyers to assess the terms and conditions of the gas sales contracts underlying export licence applications relative to the terms and conditions they are able to obtain from suppliers. If the terms and conditions being offered to export customers are more favourable than those available to domestic customers, a Canadian buyer may wish to file a complaint with the Board. The Board would adjudicate each complaint on the basis of an assessment of whether, as a matter of fact, the complainant has or has not been able to obtain additional gas supplies on terms and conditions, including price, similar to those contained in the gas export licence application submitted to the Board.

Domestic gas purchasers who wish to file a complaint must demonstrate that they have attempted to contract for additional gas supplies and that they have not been able to obtain such supplies on terms and conditions similar to those contained in the gas sales contract. At the same time, export licence applicants are expected to respond to concerns expressed by a complainant. If the Board were to find that a complaint is valid, it would then have to determine what action need be taken to remedy the situation. This could involve a delay in the licence proceeding, a denial of the export licence application or some other action appropriate to the circumstances of the particular application.

2.1.2 Export Impact Assessment

The purpose of the EIA is to allow the Board to determine whether a proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices. The EIA does not contemplate the Board having a view on the desirability of any particular volume of exports or price level for Canadian gas. Rather, the intent is to focus on whether the Canadian energy market can adjust to incremental gas exports without causing Canadians difficulty in meeting their energy needs at prices determined in the market.

Applicants and intervenors have the option of using the Board's analysis or of preparing and submitting their own analysis.

The Board's first EIA, dated September 1989, was based on several projections of exports. The study featured analyses of long-term natural gas supply, demand, prices and export levels and provided a statement of the assumptions and explanation of the analytical techniques used.

On 3 September 1992, the Board released a draft EIA and announced that it was planning to convene an EIA workshop to promote discussion and exchange information. The workshop took place in April 1993 and a summary of the discussions was released in June 1993. Subsequently, on 8 December 1993, the Board announced changes to the EIA process. It stated that, commencing with the next supply and demand report, the Board would include in those reports an analysis of the long-term

implications of alternate export levels for Canadian markets. These reports would be supplemented by assessments of market adjustment issues in the Board's Natural Gas Market Assessment ("NGMA") reports.

The Board's second EIA, which was prepared in consultation with the energy industry and other interested parties, was included in Chapter 6 of the NEB report entitled *Canadian Energy Supply and Demand 1993 - 2010 - Technical Report* ("Technical Report"), dated December 1994.

2.1.3 The Other Public Interest Considerations

As part of its assessment of the Other Public Interest Considerations, the Board normally:

- makes an assessment of the likelihood that licensed volumes will be taken;
- makes an assessment of the durability of gas sales contracts;
- has regard to whether gas sales contracts were negotiated at arm's length;
- verifies that there is producer support for a gas export application;
- verifies that there are provisions in the gas sales contracts for the payment of the associated transportation charges on Canadian pipelines over the term of the gas sales contract; and
- determines the appropriate length of term for an export licence, having regard to:

(i) evidence on the adequacy of the gas supply available to the export licence applicant to support the applied-for volumes over the requested licence term;

(ii) evidence on the necessity of the requested term in light of the terms of the associated gas sales and transportation contracts and the terms of the approvals from other regulatory bodies; and

(iii) any other evidence which the Board deems to be relevant to the appropriate term of the licence.

In assessing the above considerations, the Board takes into account information regarding gas supply, transportation, markets, sales contracts and the status of regulatory authorizations. This information is provided by applicants in response to the information filing requirements of the *National Energy Board Part VI Regulations* (the "Regulations") and during the public hearing process.

The above statement on the Other Public Interest Considerations provides guidance to parties as to the considerations the Board normally has regard to in assessing the merits of gas export licence applications. However, in the context of each specific export licence application, the Board has regard to all additional factors that appear to it to be relevant. This could include, for example, any upstream environmental effects that were necessarily connected with an export licence application.

Gas Supply

In its assessment of gas supply, the Board reviews the contractual arrangements pertaining to supply and the adequacy of both reserves and productive capacity.

In making its assessment of the adequacy of gas supply available to the export licence applicant to support the applied-for volumes over the requested licence term, the Board is flexible but normally expects applicants to demonstrate that established reserves are equal to or exceed the applied-for volume and that productive capacity is adequate to meet the proposed annual export volumes over the majority of the applied-for licence term.

Each applicant is required to provide an estimate of established reserves which can be assessed against its requirements, including the proposed export. The Board conducts geological and engineering analyses of each applicant's gas supply in order to prepare its own estimates. A review and an assessment of the ownership and contractual status of all pools included in the applications are also done.

The Board uses its estimate of reserves, along with basic deliverability data for each pool submitted, in preparing its productive capacity projections. These projections are generally adjusted to reflect production at the annual level of requirements. The requirements shown in the productive capacity figures are usually based on an annual load factor of 100 percent and may, therefore, somewhat overstate each applicant's actual supply requirements.

Where an export is being supplied from a corporate supply pool, the Board will examine the make-up of that pool, its established reserves and productive capacity, and other sales commitments to be served from the same supply pool. Similarly, where corporate warranties are used to backstop a supply arrangement, the Board will examine the likely availability of this supply, including any contractual commitments.

Transportation

Regarding the transportation arrangements underpinning an export project, the Board reviews the status of all upstream and downstream transportation arrangements, including transportation contracts, either in final form or as precedent agreements. The Board also considers the term and contracted capacity of the transportation arrangements.

Markets

The applications dealt with in GH-1-95 are for sales to two types of end-use markets: sales for system supply and sales to a cogeneration facility. The latter is defined as a facility that produces electricity and thermal energy for use in commercial or industrial operations. The Board's review of these types of markets includes consideration of the following:

- for exports for system supply, consideration of the purchaser's current and projected requirements and supply portfolio, and the role of the Canadian gas supply within that portfolio; and,

- for exports to a cogeneration facility, consideration of the contractual chain, from the gas sales contract to the power and thermal sales contracts. The Board also considers the markets for the power and thermal output of the facility and the status of project financing and construction schedules.

For each type of end-use market, the review includes consideration, among other items, of the load factors at which the proposed exports are expected to flow.

Sales Contracts

The Board's review of the contractual arrangements includes consideration of the contractual obligations between the Canadian sellers and the U.S. buyers, including executed gas sales contracts. The Board's review also includes an examination of any resale arrangements that occur beyond the international boundary sale point, where such arrangements have a direct effect on the international sales agreement.

Status of Regulatory Authorizations

The Board reviews the status of pertinent regulatory authorizations in Canada and the U.S., including provincial removal authorizations and Department of Energy, Office of Fossil Energy ("DOE/FE") import authorization.

The Board's review also includes evidence of producer support and the status of any necessary state regulatory commission approvals.

Upstream Environmental Effects

For the GH-1-95 proceeding, the Board decided to rely on the necessary connection test described in the GH-5-93 Review and the Reasons for Decision in GH-3-94. This test is used to establish the scope of the Board's assessment of the potential environmental effects of the applications to export gas. The Board will consider the environmental effects of new upstream facilities and activities only when those facilities or activities are necessarily connected to the requirements of the export licence. For the necessary connection to exist, the export licence and new upstream facilities or activities must be integrated to the extent that they can be seen to form part of a single course of action.

2.2 Ongoing Monitoring

There are two components to the Board's ongoing monitoring under the MBP:

- assessments of Canadian energy supply and demand; and
- natural gas market assessments.

2.2.1 Assessment of Canadian Energy Supply and Demand

The Act requires the Board to keep under review the outlook for Canadian supply of all major energy commodities, including electricity, oil and natural gas and their by-products and the demand for Canadian energy in Canada and abroad. As part of this function, the Board prepares and maintains forecasts of energy supply and demand and has, from time to time, published related reports after obtaining the views of provincial governments, industry and other parties. The first volume of the Board's 1994 report, titled *Canadian Energy Supply and Demand 1993-2010 - Trends and Issues* ("Trends and Issues"), was released in July 1994. The companion Technical Report was released in December 1994.

Among the matters analyzed in the Technical Report are the trends in the discovery of oil and gas in Canada, the evolving shares of the energy market served by the various energy forms, and the implications for the adjustment of the natural gas market in response to alternative supply and demand assumptions.

In January 1995, the Board published a report entitled *Unconnected Gas Supply Study - Phase I Evaluation of Unconnected Reserves in Alberta* ("Unconnected Gas Study"), which assessed the unconnected gas reserves in a central portion of Alberta and in several large unconnected pools in Alberta.

2.2.2 Natural Gas Market Assessment

As a second part of its ongoing monitoring, the Board analyses shorter-term developments in natural gas supply, demand and prices, and periodically publishes reports on its findings.

The focus of these reports is of a narrower and shorter term than that of the supply and demand reports. They typically focus on one aspect of the market which is of current interest. Generally, the NGMA reports provide coverage of recent developments and near-term prospects for natural gas markets, competitive activity in the market, pipeline utilization for Canadian and export purposes, and the quantity and quality of gas supply.

2.3 Summary of the Market-Based Procedure

The Board determines that the quantity of gas proposed to be exported is in the Canadian public interest, and surplus to Canadian needs, if:

- there are no complaints registered under the Complaints Procedure;
- the EIA indicates that Canadians will have no difficulty in meeting their energy requirements at fair market prices;
- there are no other major public interest concerns in the view of the Board; and

- ongoing monitoring suggests that markets are functioning normally and does not identify other issues relating to the evolution of supply or demand which cast doubt on the ability of Canadians to meet their future energy requirements.

Chapter 3

Intervenor Participation

3.1 Intervenor Assistance

Some intervenors commented that as members of the public, with little resources and no legal training, they experienced difficulty in organizing their case. As such, they suggested that a system of intervenor funding be established.

The Board reminded parties that it has no statutory or inherent authority to grant intervenor costs in a hearing of this type. However, the Board is always concerned that there be fair participation in its proceedings and has made every effort to accommodate the concerns of intervenors. For example, the Board undertook to effect service on behalf of the intervenors. The Board also provided assistance to all parties by ensuring that photocopying equipment was available throughout the hearing and allowed intervenors to file single copies of their documents. As well, the Board maintained a half-day hearing schedule throughout the proceeding to enable intervenors to prepare for the following day. Board counsel was also available to assist intervenors with procedural matters.

3.2 Intervenor Procedures

In the last gas export hearing, GH-3-94, the Board noted that it expected intervenors would be more familiar with the Board's procedures for subsequent gas export hearings. As a result, the Board considered it likely that less latitude in relation to the admission of evidence and other procedural matters would be necessary. As an expert tribunal, the Board must deal with very technical matters in an efficient manner while ensuring procedural fairness for all parties. Therefore, in this hearing, the Board followed its established procedures and required parties to file written evidence in advance, and to observe pre-established deadlines. As a result, the Board's procedures differed from those utilized in the last gas export hearing but followed the Board's normal procedural requirements.

Chapter 4

Motions and Rulings

4.1 Introduction

On the first day of the GH-1-95 hearing and prior to hearing any evidence on the merits of the applications, various motions were made before the Board. On the second day of the hearing, the Board ruled on these motions and provided written reasons in its *Ruling on Preliminary Motions heard on 29 May 1995*. A motion to hear the two applications separately was subsequently heard the second day and the Board issued a ruling from the bench. These rulings are repeated in this chapter to assist the reader in fully understanding the preliminary matters which required the Board's consideration.

4.2 Motions on Preliminary Matters

The following are the rulings issued on the motions heard on 29 May 1995.

> Yesterday, the Board heard arguments on various motions. The motions may be characterized as follows:
>
> 1. an application to find that an apprehension of bias existed on the part of the Board;
>
> 2. motions seeking an adjournment of the proceeding in whole or in part, and alternatively, that the applications be denied on the basis that the applicants provided insufficient evidence; and
>
> 3. an application with respect to the use by the Board of the necessary connection test.
>
> The Board has made the following rulings:
>
> Mr. Wolf, on behalf of the parties he represented, raised the first motion and spoke to the issue of apprehension of bias. The Board notes the arguments presented by other parties which either supported this motion or opposed it. The Board is of the view that there is no evidence on the record to substantiate any reasonable apprehension of bias. Accusations without substantiation are not to be given any consideration. Further, it does not see any merit in the argument of "institutional bias". It is proper for the Board to adopt guidelines or policies in carrying out its mandate, and this fact alone does not give rise to an apprehension of bias.
>
> Different grounds were invoked to support motions for an adjournment. Mr. Sawyer, on behalf of the parties he represented, asked that the Navy Yard Partners application be adjourned on the basis that it was deficient. Specifically, it was argued that Navy Yard Partners did not comply with the Market-Based Procedure ("MBP"), as it did not provide an Export Import Assessment ("EIA") which covered the length of the applied-for licence term. Alternatively, a motion was made to the Board to deny the Navy

Yard Partners application. The Board is of the view that it would be inappropriate to adjourn the Navy Yard Partners application or to deny it at this time based on the sufficiency or insufficiency of the evidence presented by Navy Yard Partners. This is clearly a matter for ultimate determination by the Board, after all parties have had a chance to be heard.

Western Canada Wilderness Committee ("WCWC") brought two applications for an adjournment or denial of the applications. One application was on the basis that the Board's MBP does not take into account the external costs of an application, including the economic impact of environmental damage. In the Board's view, what WCWC is seeking is a return to cost benefit analysis as an aspect of the MBP. The Board decided in GHW-4-89, a Review of Certain Aspects of the Market Based Procedure, that it would not continue to rely on cost benefit analysis. The Board was not persuaded by WCWC that it should return to the cost benefit analysis approach.

The other motions for adjournment dealt directly, or indirectly, with the question of the scope of the Board's assessment of the Other Public Interest Considerations, including the environmental effects of the export applications.

Alberta Wilderness Association ("AWA") argued that the Board should adjourn this hearing until it had an opportunity to reconsider the importance of its full responsibility to Canadians in this type of hearing, including the environmental effects of the applied-for gas exports. This intervenor suggested the Board could not proceed until it came to a decision on the question of whether or not it could guarantee that no new molecules of gas will ever be exported other than those already accounted for in the corporate pools.

WCWC also argued that the onus is on the applicant to provide information sufficient to establish that the exports are in the Canadian public interest and this information has not been provided. The further information it sought related to environmental matters.

To rule on this aspect of WCWC's motion and the motion of AWA, the Board must decide what environmental information should be required from the applicants. To do so, the Board must consider the motions of Rocky Mountain Ecosystem Coalition ("RMEC") relating to the necessary connection test which the Board has relied on to provide a framework for the consideration of the environmental effects relevant to the export licence applications. RMEC advanced two lines of argument in relation to this test.

First, RMEC argued that it is unlawful of the Board to rely on the necessary connection test. The legal framework underpinning this test has changed with the repeal of the *Environmental Assessment Review Process Guidelines Order* ("EARP Guidelines Order") and now the only basis for the consideration of environmental effects is the *National Energy Board Act*. The Board does not find this argument meritorious. The *National Energy Board Act* governed the Board's activities during the last two gas export hearings. It is not new, and although the Board looked to the EARP Guidelines Order for guidance in undertaking an assessment of the environmental effects of the applications, it could not and did not put in place a policy

for assessment of environmental effects that contravened or ignored the *National Energy Board Act.*

RMEC further argued that the necessary connection test was unlawful because it was an improper exercise of the Board's discretion. As was pointed out to RMEC by the Board during the course of argument, the Board, for the purpose of exercising its discretion, has the ability to set policies to assist parties with the filing of evidence and the establishment of their case. To do so is not unlawful so long as it is open to parties to show that the policies should not be applied in the circumstances of the particular case. This RMEC was invited to do.

RMEC's second argument related to the Board's jurisdiction to consider environmental effects. RMEC argued that the necessary connection test is a "shell game" and does not give the Board the "macro" approach it should be taking to consider the environmental effects of an export application. The macro approach it suggested involved a consideration of cumulative and incremental environmental effects.

The Board is of the view that to consider the environmental effects of an export application it must first decide on the scope of the assessment to be undertaken. This provides the framework necessary for a consideration of the effects relevant to the application. The macro environmental effects proposed for consideration by RMEC are simply too remote to be considered in the course of a hearing related to a specific gas export application. This was admitted by RMEC when Mr. Sawyer noted that an assessment of that scale and magnitude might better occur outside the course of this hearing. In the result, the intervenors failed to persuade the Board that it should not rely on the necessary connection test for the purposes of this hearing. Therefore, the Board has decided to utilize the necessary connection test for the purpose of establishing the scope of the consideration of environmental effects relevant to the applications before it.

Lastly, the Board notes that some intervenors argued that the Board had changed the test from the "necessary connection test" to the "single course of action test". The Board would refer parties to page 23 of the Reasons for Decision in GH-3-94 where the Board used the latter words as illustrative of the necessary connection test. There has been no change in the scoping mechanism used by the Board. It follows from these rulings that the applications of WCWC and AWA for an adjournment are denied.

In summary, the Board has made the following decisions:

> The application to have the Board step down on the basis of apprehension of bias is dismissed.
>
> The motions to adjourn or deny the applications are denied. Parties may seek to demonstrate in argument that the applicants have not provided evidence sufficient to satisfy the factors to be considered under section 118 of the *National Energy Board Act.*

> The Board will continue to apply the necessary connection test for the purposes of this hearing. During this phase of the hearing, the Board will not hear evidence, cross-examination or argument on the upstream environmental effects of the export applications. This phase will be used to decide if the test has been met and parties may present evidence, argument and cross-examination for that purpose.

4.3 Motion to Separate Hearing of the Applications

Subsequent to the issuance of the above ruling, Mr. Sawyer, on behalf of the parties he represented, made a motion to separate the hearing of the applications on the basis that they were not "substantially similar" and that prejudicial "cross-leakage of the evidence" could occur. The Board heard arguments and decided to grant the request. The Board's ruling was as follows:

> The Board has decided to separate its consideration of the Navy Yard Partners and Renaissance applications. In that regard, we will proceed first with Navy Yard Partners and its panel of witnesses. We will then hear intervenor evidence and then argument on the Navy Yard Partners case. Then, we will go through the same process for the Renaissance application.

The Board further directed intervenors to separate their written evidence, indicating which application it applied to. Similarly, with respect to any supplemental evidence that parties wished to file, the Board required that parties indicate to which application it applied.

Chapter 5

Brooklyn Navy Yard Cogeneration Partners, L.P.

5.1 Application Summary

By application dated 23 February 1995, Navy Yard Partners sought, pursuant to Part VI of the Act, a natural gas export licence for a five-year term following the expiration of Licence GL-232, which was issued following the GH-5-93 Review proceeding. During the course of the hearing, Navy Yard Partners revised its application to request an amendment to Licence GL-232, pursuant to subsection 21(2) of the Act, with the following terms and conditions.

Term	-	five-year extension to the term of Licence GL-232
Point of Export	-	Iroquois, Ontario
Maximum Daily Quantity	-	750.0 10^3m^3 (26.5 MMcf)
Maximum Annual Quantity	-	274.0 10^6m^3 (9.7 Bcf)
Maximum Term Quantity	-	1 370 10^6m^3 (48.5 Bcf)
Tolerances	-	ten percent per day and two percent per year

In February 1994, the Board approved Navy Yard Partners' application to export natural gas over a 15-year term with a Maximum Term Quantity of 4 110 10^6m^3 and the same Maximum Daily Quantity ("MDQ") and Maximum Annual Quantity ("MAQ") as above. Upon approval of the Governor in Council, Navy Yard Partners was issued Licence GL-232.

The gas exported under Licence GL-232 will be produced from the Alberta supply pools of Crestar Energy ("Crestar") and PanCanadian Petroleum Limited ("PanCanadian"). The gas will then be transported on the NOVA Corporation of Alberta ("NOVA") system to the TransCanada PipeLines Limited ("TransCanada") system near Empress, Alberta. The gas will then flow on TransCanada to the international border near Iroquois, Ontario. At this point, the gas will flow on the Iroquois Gas Transmission System, L.P. ("IGTS") to Long Island Lighting Company ("Lilco"). Lilco will in turn exchange this gas for an equivalent amount delivered to Brooklyn Union Gas Company ("BUG") which will transport the gas to the cogeneration facility in Brooklyn, New York. Electrical energy produced by the cogeneration facility would be purchased by Consolidated Edison Company of New York, Inc. ("Con Edison") and thermal energy by Red Hook Water Pollution Control Plant.

By its amended application, Navy Yard Partners applied for a five-year extension to Licence GL-232, with the same MDQ and MAQ as that contained in Licence GL-232. The provisions of the gas purchase contracts and the market remain essentially the same as those examined in the GH-5-93 proceeding.

5.2 Gas Supply

5.2.1 Supply Sources

Crestar and PanCanadian will provide the gas from their Alberta supply pools. No specific pools have been contractually dedicated by either Crestar or PanCanadian to Navy Yard Partners. Further details regarding the sale of gas from these two producers to Navy Yard Partners are set out in Section 5.5.

5.2.2 Reserves

The estimates of reserves provided by the Applicant for these supply pools are those recognized by the Alberta Energy and Utilities Board ("AEUB"). Table 5-1 shows that the Board's estimate of Navy Yard Partners' reserves is four percent lower than that submitted by Navy Yard Partners. However, the Board's estimates exceed the total requirements, including the applied-for term volume.

PanCanadian has also submitted a facilities application to the Board under section 58 of the Act, in a separate proceeding, for a proposed cogeneration facility to be built near Ottawa, Ontario. PanCanadian indicated that it intended to supply 900 $10^3m^3/d$ (32 MMcf/d) of gas to this facility from

Table 5-1
Comparison of Estimates of Navy Yard Partners' Established Gas Reserves with the Applied-for Term Volume and Total Requirements

10^6m^3
(Bcf)

	Navy Yard Partners[1]	NEB[1]	Applied-for Volume	Total Requirements
Crestar	14 768 (521.3)	14 022 (495.0)	N/A	6 722 (237.3)
PanCanadian[2]	23 141 (816.9)	22 281 (786.5)	N/A	14 328 (505.8)
Total	37 909 (1,338.2)	36 303 (1,281.5)	1 370 (48.5)	21 050 (743.1)

1. As of 31 December 1993.
2. These estimates of remaining reserves represent the total of PanCanadian's two corporate reserve pools. The Board adopted PanCanadian's estimates for Pool 2.

the same corporate supply pools as submitted for the Navy Yard Partners application. In its analysis of PanCanadian's supply, the Board excluded the Ottawa River Project requirements of 6 774 10^6m^3 (239.1 Bcf) to 2016. If the Ottawa project had been included, both the Board's and PanCanadian's analyses would indicate a shortfall in deliverability upon commencement of the Ottawa project. PanCanadian has since requested that the Ottawa River proceedings before the Board be postponed.

Crestar provided a supply and demand balance estimate which indicates that its submitted supply will be more than adequate to support the proposed export and Crestar's other long-term requirements, including short-term requirements of 1 317 10^6m^3 (46.5 Bcf). PanCanadian submitted its reserves in two corporate reserve pools (Pool 1 and Pool 2). Pool 1 contains reserves currently under its control, and Pool 2 contains reserves which are being decontracted and returned to PanCanadian's control over the period 1 November 1994 to 1 November 1996. PanCanadian also provided a supply and demand balance estimate which indicates that its submitted supply will be more than adequate to support the proposed export and PanCanadian's other long-term requirements. PanCanadian also indicated that it expects to market approximately 4 130 10^6m^3 (145.8 Bcf) of short-term sales from this same supply pool prior to 1 October 2011.

Navy Yard Partners adopted the Board's findings in the Unconnected Gas Study only as they relate to those unconnected gas pools which were examined by the Board and which are contained in the submitted supplies of this application. Navy Yard Partners agreed that it is premature and inappropriate to extrapolate the Board's conclusions respecting certain unconnected gas pools to the remainder of the unconnected gas pools in the Western Canada Sedimentary Basin ("WCSB"). Based on the Board's findings, Crestar reduced its estimate of established reserves by 800 10^6m^3 (28.2 Bcf) while PanCanadian reduced its total reserves by 250 10^6m^3 (8.8 Bcf).

5.2.3 Productive Capacity

Figure 5-1 compares the Board's and Crestar's projections of productive capacity with Crestar's annual requirements. Crestar's projections show that Crestar has adequate productive capacity for the majority of the applied-for five-year extension to Licence GL-232. The Board's analysis suggests that Crestar's deliverability will fall short of requirements for most of the applied-for five-year extension.

A comparison of the Board's and PanCanadian's projections of productive capacity with its annual requirements (excluding the volumes for the Ottawa River Project) is shown in Figure 5-2. The Board has adopted PanCanadian's projection of productive capacity for its Pool 2 which contains reserves which are being decontracted during the period 1 November 1994 to 1 November 1996. PanCanadian's projections show that PanCanadian has adequate productive capacity for the majority of the proposed five-year extension. The Board's analysis suggests that PanCanadian's productive capacity will be unable to meet its requirements for the majority of the applied-for five-year extension.

Navy Yard Partners' indicated that the producers have more than 15 years to find and develop additional gas reserves to correct any deliverability shortfalls and to offset any reductions for unconnected pools before the applied-for extension commences. Both producers have indicated that they have other corporate supply that could be used to remedy any shortfalls in deliverability from the submitted supplies. Both producers have provided corporate warranties to Navy Yard Partners for their requirements.

Figure 5-1
Comparison of Crestar's and NEB's Estimates of
Annual Productive Capacity

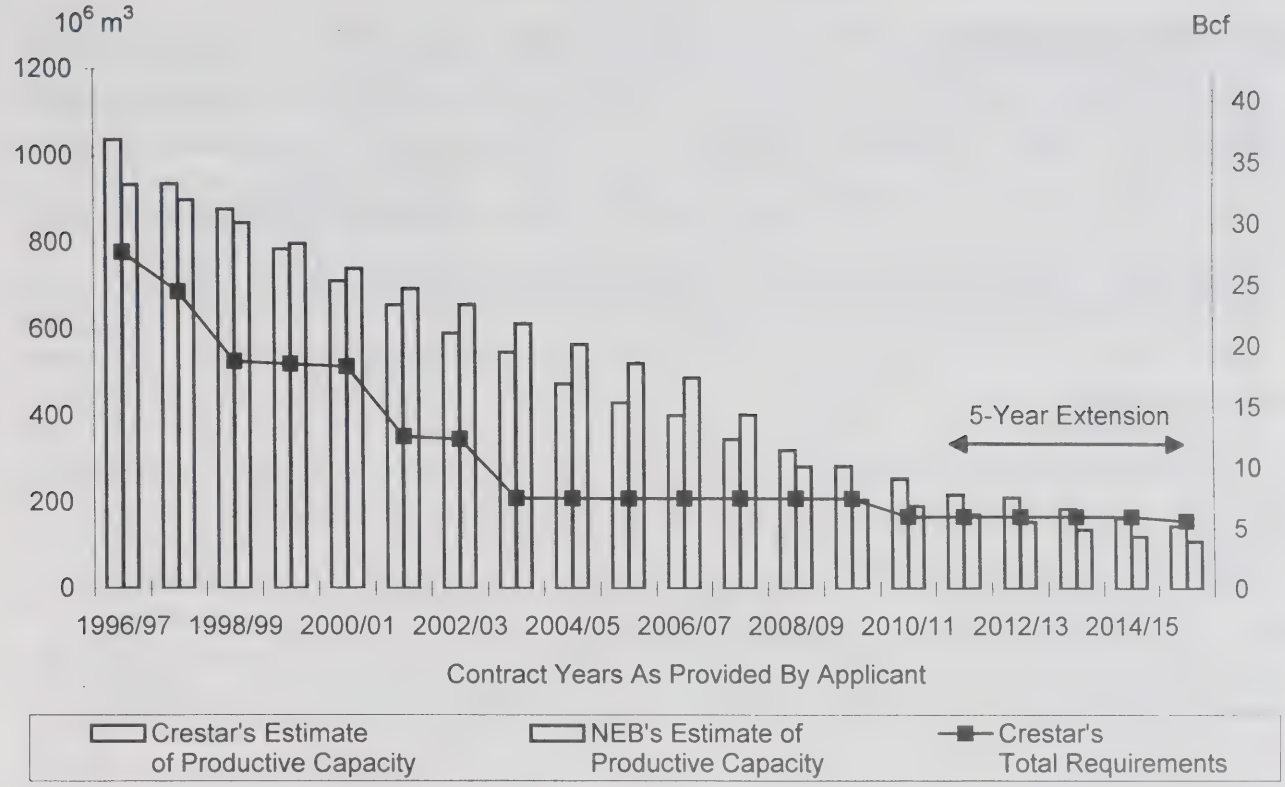
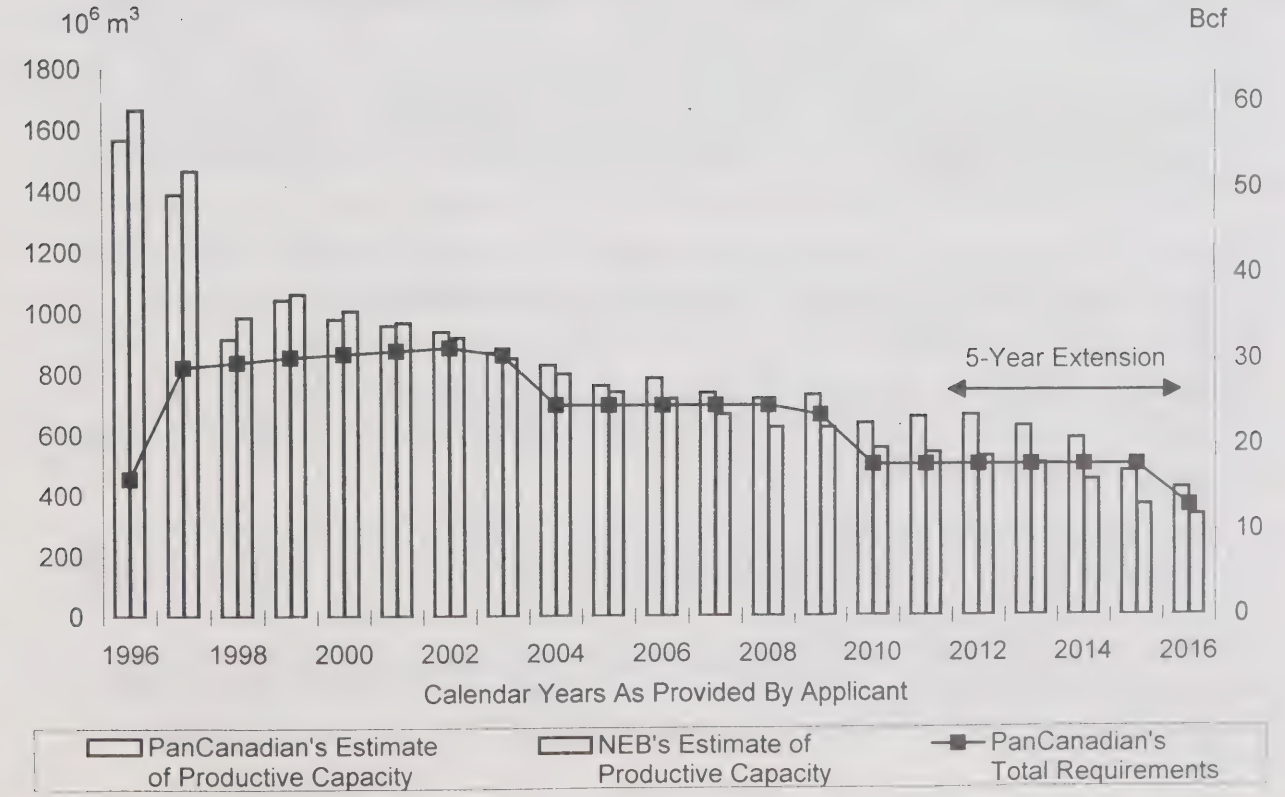


Figure 5-2
Comparison of PanCanadian's and NEB's Estimates of
Annual Productive Capacity



5.3 Transportation

Crestar and PanCanadian have executed firm service (FS) agreements for the requisite capacity on the NOVA system. Although the NOVA arrangements are for a 15-year term, the conditions of NOVA's FS Rate Schedule provide for an extension. On 25 January 1995, Navy Yard Partners executed a FS contract for transportation on the TransCanada system for a term of 20 years. Navy Yard Partners and IGTS have also executed a FS agreement for delivery of the gas to Lilco. Navy Yard Partners is currently finalizing arrangements with BUG for FS transportation to the cogeneration facility.

5.4 Market

During the GH-5-93 hearing, the Board considered Navy Yard Partners' market for the volumes of natural gas underpinning Licence GL-232, which are destined for a 286 MW gas-fired cogeneration facility. This facility is to be located within the existing Building B-41 Powerhouse of the Brooklyn Navy Yard in Brooklyn, New York. In the course of the GH-1-95 proceeding, certain intervenors questioned the status of some of the contractual arrangements underpinning the cogeneration project. In particular, some intervenors observed that the provisions of the power purchase agreements are such that Con Edison has the option, subject to certain terms and conditions, to terminate the contracts if the project is not in commercial operation by a date certain. In response, Navy Yard Partners indicated that it is continuing discussions with Con Edison to achieve timely commercial operations, thereby satisfying the power purchase agreements. Certain intervenors also noted that Navy Yard Partners has finalized only one steam contract to date, with Red Hook Water Pollution Control Plant, whereas it was envisaged in the GH-5-93 hearing that three such contracts were likely to be concluded.

Since GH-5-93, Navy Yard Partners indicated that it has suffered construction delays and a change in its investment banker. This caused Navy Yard Partners to refinance the project to provide more favourable terms through the amortization of the debt over a 20-year period. This also provides the opportunity to achieve financing terms comparable to other power generators in the market. Navy Yard Partners has spent slightly over $200 million to date on the project which is estimated to cost approximately twice this amount.

Construction of the cogeneration facility has been accelerated to meet commercial operation which is now slated for 30 November 1995, and the long-term financing arrangements for the project are expected to be in place by year-end.

Under full load operation, the cogeneration facility will require approximately 1 560 $10^3m^3/d$ (55.1 MMcf/d) of natural gas of which 750 $10^3m^3/d$ (26.5 MMcf/d) would be provided from Canadian producers and the remainder from U.S. sources.

Navy Yard Partners has also entered into a fuel management agreement with Lilco dated 19 August 1993. This agreement has been amended such that Lilco will provide gas to the project until such time as the Crestar and PanCanadian supplies become available. The amended agreement was expected to be executed shortly after the hearing. As part of this agreement, Lilco has agreed to purchase any gas which Navy Yard Partners does not use, subject to certain terms and conditions. This amended agreement will remain in effect over the applied-for five-year extension to Licence GL-232.

RMEC argued that, if the application is approved by the Board, it be conditioned on the durability of the Navy Yard Partners' contract with Con Edison and to ensure the gas volumes are not transferable, in whole, to Lilco.

5.5 Gas Sales Contracts

Navy Yard Partners will obtain its Canadian gas supply pursuant to gas sales agreements executed with Crestar and PanCanadian on 21 October and 20 October 1993, respectively. The term of each contract, as amended, will continue for twenty years following the date of commercial operation of the cogeneration facility. Navy Yard Partners or the Canadian suppliers may terminate the contracts if long-term Canadian and U.S. regulatory authorizations and transportation agreements are not obtained by the closing of construction financing. Navy Yard Partners must also receive a parental guarantee from Crestar for its obligations.

The gas sales contract with Crestar, as amended, provides for a MDQ of 10 546 GJ (10,000 MMBtu) plus fuel gas. If Navy Yard Partners fails to purchase 100 percent of the sum of the MDQs in any year, Crestar will be paid the commodity charge component of the contract price multiplied by the shortfall volume. Should Crestar fail to deliver the quantity of gas nominated on any one day, Navy Yard Partners will be indemnified for the incremental costs incurred in purchasing alternate fuel supplies.

The contract price to be paid to Crestar consists of two components, a demand charge and a commodity charge. Prior to 1 January 1996, the demand charge would be $U.S. 0.14/GJ ($U.S. 0.15/MMBtu) while the commodity charge would be $U.S. 1.83/GJ ($U.S. 1.93/MMBtu). Effective 1 January 1996, the demand charge and commodity charge components will be escalated at four percent annually.

The gas sales contract with PanCanadian, as amended, provides for a MDQ of 15 819 GJ (15,000 MMBtu) plus fuel gas. Navy Yard Partners agrees to pay PanCanadian, on a monthly basis, the contract price multiplied by the sum of the MDQs. However, if PanCanadian fails to deliver the nominated quantities, it must reimburse Navy Yard Partners for the incremental costs incurred in purchasing alternate fuel supplies.

The contract price to be paid to PanCanadian would be $U.S. 1.92/GJ ($U.S. 2.02/MMBtu) prior to 1 January 1996. Commencing on that date, the contract price shall be adjusted by a floating index factor, weighted 70 percent, and a fixed index factor, weighted 30 percent. The floating index factor is based on the combined arithmetic average of nine U.S. Gulf Coast gas indices while the fixed index factor is 1.041.

As a provision in both gas sales contracts, Crestar, PanCanadian and Navy Yard Partners have accepted the risk that the respective contract prices may be above or below the market price for gas at any time.

The parties may submit to binding arbitration should any dispute arise from the contracts.

5.6 Status of Regulatory Authorizations

During the hearing, it was noted that both Crestar and PanCanadian filed applications for energy removal permits with the AEUB and decisions are pending. Navy Yard Partners has received import authorization from the DOE/FE for the full 20-year term which includes the applied-for extension to the term of Licence GL-232.

5.7 Application of the Market-Based Procedure

RMEC argued that the MBP does not adequately reflect the requirements of section 118 of the Act, in particular, with respect to the obligation to have regard to reasonably foreseeable Canadian energy requirements and to the trends in the discovery of gas in Canada. RMEC noted that the Act does not refer to the marketplace or pricing, but the MBP puts a strong emphasis on finding that the marketplace is functioning. The Green Alternatives Institute of Alberta ("GAIA") argued that the MBP is severely flawed because it does not put much value on the natural resource in place, nor on its value as an irreplaceable asset.

5.7.1 Complaints Procedure

Navy Yard Partners noted that no complaints were filed by Canadian gas buyers about the applied-for gas exports. It argued that this was strong evidence that the gas is not required by domestic users and should be deemed to be surplus to Canadian needs. No parties to the hearing submitted any evidence that the terms and conditions being offered to export buyers were more favourable than those available to domestic gas buyers.

5.7.2 Export Impact Assessment

The purpose of the EIA is to assist the Board in determining whether a proposed export is likely to cause Canadians difficulty in meeting their future energy requirements at fair market prices. Licence applicants have the option of filing their own analysis or relying on the Board's most recent EIA.

The results of the Board's most recent EIA are explained in Chapter 6 of the 1994 Technical Report. The analysis examined the implications of increased U.S. and Canadian demand on domestic gas supply, exports and Canadian burner tip prices under a range of assumptions. In brief, the report concluded that the resource base is adequate to meet the projected demand for both domestic consumption and exports. It also concluded that "given the length of the period over which these effects occur, both the up-stream industry and the consuming sector appear to be able to make the necessary adjustments to respond to the supply and demand conditions."

Subsequently, the Board published its Unconnected Gas Study, which assessed the unconnected gas reserves of small pools in central Alberta and in several large unconnected pools in the province. The study concluded that the unconnected gas reserves in the central Alberta study area had been overstated by approximately 46 percent and in the large pools by 25 percent. The report noted that care should be taken not to extrapolate the results of the study to other areas of the WCSB.

Navy Yard Partners argued that its applied-for export volumes are so small that they could not conceivably cause Canadians difficulty in meeting their future energy requirements. It relied on the Board's most recent EIA as the basis for its assessment. Navy Yard Partners recognized that the Board's EIA covers only the period 1993 to 2010, but submitted that the trend lines are unlikely to show any sharp deviations or discontinuities if the analysis were extended to 2016. Thus, the conclusions of the study would not change significantly if the quantitative analysis were extended.

Navy Yard Partners noted that the Board had previously stated that the extent of analysis in an EIA, and whether or not it need be qualitative or quantitative, should be related to the size of the application. As the applied-for volumes are small, Navy Yard Partners argued that a qualitative extension of the Board's EIA was a reasonable way to fulfil the EIA filing requirement.

With respect to the high demand scenario in the Board's EIA, Navy Yard Partners thought that it was very uncertain that it would materialize and noted that technological change on the demand side which improves the efficiency of gas usage would curb the growth in demand. Navy Yard Partners' view was that the price of gas will probably show little increase over the long term because ongoing technological change helps keep costs and prices low.

Navy Yard Partners argued that one should not simply extrapolate the results of the Board's Unconnected Gas Study to the entire WCSB. Furthermore, Navy Yard Partners argued that recent data on trends in finding rates, pool size and replacement of reserves are not indicative of a depleting resource base. Rather, these trends simply show that producers are attempting to manage their inventories efficiently by not drilling up and connecting reserves too far in advance of the time when they can reasonably be brought into production.

The Alberta Greens, Northern Light Society ("NLS") and RMEC stated that Navy Yard Partners did not submit evidence which constituted an EIA for the period covered by the application. There was no data provided by Navy Yard Partners and, in their view, Navy Yard Partners did not adequately comply with the requirement to file an EIA. NLS further argued that the Board's EIA is no longer valid because of recent information which affects the analysis, including the AEUB's report on replacement of natural gas reserves during 1994 and the Board's Unconnected Gas Study.

The Alberta Greens and NLS both argued that recent evidence, including the Board's own Unconnected Gas Study, shows that trends with respect to finding rates, replacement of reserves, and average pool size, all point to a diminishing resource base. In this regard, NLS argued that the Board's primary concern should be with security of supply for domestic needs, rather than whether or not Navy Yard Partners has adequate reserves to cover its licence application.

GAIA stated that the MBP is flawed because it considers the market in a snapshot, or at least a very short period of time. GAIA argued that the Board should have regard to the very long term, with a view to sustainable development.

Mr. D. Crowe, on his own behalf, also argued that the Board should have regard to a longer time horizon when considering the Canadian public interest and should not commit non-renewable resources to the export market.

5.7.3 The Other Public Interest Considerations

5.7.3.1 Upstream Environmental Effects

As noted in Chapter 4.2 of these Reasons, parties argued at the commencement of the hearing that the necessary connection test for establishing the scope of the environmental assessment to be undertaken by the Board, which was established in GH-3-94 and in the GH-5-93 Review, should not be applied. After hearing argument on the question, the Board decided to utilize this test for the purpose of establishing the scope of the consideration of environmental effects relevant to the applications before it.

Navy Yard Partners submitted that the gas that would be supplied to meet the requirements of the export contract would come from the Crestar and PanCanadian corporate pools. As a result, no necessary connection would exist.

NLS submitted that a direct connection had been established between the Navy Yard Partners application and upstream activities since the gas to be exported would likely be processed through a gas plant. A similar argument was put forward by RMEC. RMEC examined the definitions of "cause", and "natural and probable consequences" and argued that the natural and probable consequence of granting the applied-for licence would be incremental air emissions throughout the life of the contract, and those emissions should be environmentally assessed. An analogy was also drawn to financial transactions and the tracing of funds that can occur in relation to them.

WCWC argued that since the gas may come from future discoveries and will be processed at some yet-to-be-built facility, the environmental effects of those upstream facilities should be considered when deciding whether the application will be granted.

Mr. D. Crowe argued that the Board should take the view that every cubic foot of gas that is exported contains some gas from every well of the corporate pool. In essence, it was his view that the environmental effects of the exports could be considered on an aggregate basis, based on the percentage of gas exported from the corporate pool.

5.7.3.2 Externalities

RMEC noted that Navy Yard Partners stated that the prices in its export sales contract do not include an allowance for externalities. RMEC suggested that the Board examine the regulatory practices in other jurisdictions with respect to externalities and should take these into account when considering whether the export prices are in the public interest.

Navy Yard Partners argued that, although the Board may wish to obtain evidence on export pricing when considering the public interest, it does not have a mandate to ensure that export prices recover the costs of externalities.

Views of the Board

The Board does not agree with the arguments of RMEC and GAIA that the MBP does not adequately discharge the obligations placed on the Board by section 118 of the NEB Act. The MBP in its entirety, including both the public hearing and monitoring components, provides for a comprehensive examination of all aspects of the public interest which are relevant to an export licence application. This includes consideration of gas surplus, having regard to the reasonably foreseeable Canadian energy requirements and trends in the discovery of natural gas.

The first element of the MBP is the Complaints Procedure. Canadian users of natural gas must have an opportunity to buy gas on terms and conditions similar to those of the proposed export. The Board notes that, since there were no complaints received, the applicant has satisfied this aspect of the MBP.

The next component is the EIA, wherein the Board must determine whether the proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices. The evidence which the Board has before it is largely contained in the EIA analysis of the 1994 Technical Report, which the applicant relied upon as the basis for its evidence. The analysis in this report indicates that high levels of gas exports are sustainable until the year 2010, and that no difficulties for Canadian energy users are anticipated under the various scenarios examined. The results of its subsequent Unconnected Gas Study are not considered to have a significant effect on the ultimate resources and do not invalidate the findings of the most recent EIA. Rather, they indicate that producers may have to undertake more drilling than was previously projected. Further, the Board notes that the trend with respect to natural gas prices, which are strong indicator of resource availability, has been for prices to remain low in the face of strong demand growth.

A major concern of intervenors was the approach used by the applicant to extend the results of the EIA beyond 2010. They argued that the applicant's qualitative approach to an EIA for the period 2011 to 2016 did not constitute evidence or, if it did, it was inadequate.

The Board recognizes that the applicant did not provide a quantitative analysis of the likely outlook for natural gas supplies, demand and prices for the applied-for extension to its existing licence. Similarly, although intervenors criticized this lack of quantitative analysis, they did not submit any quantitative evidence that would indicate that the proposed exports might cause difficulties for Canadians in satisfying their future energy requirements at fair market prices. Given the conclusion in the EIA that a high level of exports is sustainable to 2010 under a wide range of scenarios, the Board accepts the applicant's view that some level of exports will be sustainable beyond that year.

Additionally, the Board notes that actual licensed volumes beyond 2010 are very small. Given the small quantity of applied-for exports in this application, along with a reasonable certainty that some level of exports will be sustainable beyond 2010, the Board is satisfied that the export of the applied-for volumes would not cause

difficulties for Canadians in meeting their future energy requirements at fair market prices.

The final aspect of the hearing component of the MBP is the Other Public Interest Considerations. The Board acknowledges that, as pointed out by certain intervenors, there is some uncertainty with regard to the status of the power purchase contracts with Con Edison. As well, not all of the steam contracts mentioned in the GH-5-93 hearing are in place. The Board is, however, cognizant of the fact that Navy Yard Partners is accelerating the construction of the project, has spent over half of the estimated cost totalling some $200 million, and is continuing discussions with Con Edison to ensure commencement of power sales under the agreements. The Board notes that Navy Yard Partners expects to close financing of the project by year-end. Furthermore, the five-year extension to the fifteen-year term of Licence GL-232 would provide the opportunity to Navy Yard Partners to achieve more favourable financing terms, thus enabling the project to be competitive with similar cogeneration plants in the market.

The Board notes that Navy Yard Partners is contractually obligated to purchase the MDQs in any year under the gas sales contracts with Crestar and PanCanadian. In addition, the Board recognizes that Navy Yard Partners' take obligation will be supported by Lilco under the terms of the fuel management agreement.

The Board notes that the market-oriented approach used to determine the PanCanadian contract price and the varied portfolio of markets and prices, including fixed price/fixed escalator contracts in determining the Crestar contract price, are the same as those considered in the GH-5-93 proceeding. The Board also notes that under the extension provision, Navy Yard Partners and both Canadian suppliers have agreed to accept the risk that the contract prices may be above or below the market price at any time. The gas sales contracts are also subject to binding arbitration. The Board is thus satisfied that the gas sales contracts are likely to remain attractive to the parties over the proposed five-year extension and are therefore durable.

The Board has reviewed the amended gas sales contracts between Navy Yard Partners and each of Crestar and PanCanadian, and notes that they have been negotiated at arm's length.

Since Crestar and PanCanadian own the gas supply destined for export, a finding of producer support is not necessary.

The Board notes that, in the case of the Crestar contract, the contract price contains a demand charge component for the recovery of NOVA demand charges throughout the term of the contract, including the five-year extension. The price that PanCanadian would receive will provide for the recovery of NOVA demand charges throughout the term of the contract, including the extension. TransCanada demand charges are the responsibility of Navy Yard Partners. Therefore, the Board is satisfied that there are provisions in the gas sales contracts for the payment of the associated transportation charges on Canadian pipelines during the five-year extension.

With respect to the unconnected reserves in this application, the Board notes that the producers have reduced their estimates for those pools included in the application, and which were considered in the Unconnected Gas Study. Both producers supported the view expressed by the Board in the study that the results should not be extrapolated to the WCSB. The Board nevertheless recognizes that a significant portion of the applicant's supply is unconnected.

Regarding the adequacy of supply, the Board's estimate of total reserves for the two producers greatly exceeds their total requirements, including the proposed export. The Board's projections of productive capacity for the producers show that they cannot satisfy the majority of term of the five-year extension. While the Board normally expects applicants to demonstrate that productive capacity is adequate for the majority of the applied-for term, the Board can be flexible. Productive capacity modelling over the long term has some uncertainties. The applicant's producers have each demonstrated that, while they have indicated a shortfall for a portion of the applied-for extension, they have adequate productive capacity over the majority of the 20-year term. The Board is satisfied that these producers can mitigate any apparent shortfalls, since each producer has more than 15 years to supplement its supply prior to the term of the extension. In addition, the producers have provided to Navy Yard Partners a corporate warranty for their requirements. The Board notes that the term of the amended gas sales contracts with Crestar and PanCanadian, approved by the Board; the power purchase contracts, the requested transportation service, and the necessary regulatory authorizations are consistent with, or exceed the term of the requested licence. The Board is therefore satisfied that the requested licence term is appropriate. As well, the Board notes that the producers have filed applications for removal permits with the AEUB and Navy Yard Partners has received import authorization from the DOE/FE.

As the Board noted in GH-3-94, when considering whether a necessary connection exists for environmental assessment purposes between new upstream activities and facilities and the requirements of the export licence, each case must be considered on its own facts. The Board was of the view that, for a necessary connection to exist, the export licence and any new upstream facilities or activities must be integrated to the extent that they can be seen to form part of a single course of action. The Board found in that case that where the gas would be provided from a corporate pool or a large collection of individual gas pools operated by many different producers, it was unlikely that a necessary connection would be found. The pools are used to satisfy many diverse requirements. The development of new facilities and activities in relation to those pools occurs as a result of general economic conditions and the many existing and anticipated demands of the market. No one pool is normally developed to satisfy a specific export or domestic contract or group of contracts.

As no new transportation facilities are required in Canada to meet the requirements of the applied-for five-year extension to Licence GL-232 and the gas to be exported will be coming from the corporate pools of Crestar and PanCanadian, the Board is of the view that no necessary connection exists between the requirements of the applied-for

five-year extension and any new upstream facilities or activities. Therefore, no environmental assessment will be required.

As for the question of whether or not the export prices recover the costs of externalities, the Board does not consider it a relevant issue in the context of this application.

For the above reasons, the Board is satisfied that the quantity of gas proposed to be exported is in the Canadian public interest. The Board concludes that it does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada.

Finally, the Board believes that it would be appropriate to include a condition in Licence GL-232 to ensure that the gas exported pursuant to the licence is to be used in the cogeneration plant as described in the application, failing which the term of the licence shall end 15 years following its commencement.

Decision

The Board has decided to issue an Amending Order to Navy Yard Partners, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the amendment to Licence GL-232.

Chapter 6

Renaissance Energy Ltd.

6.1 Application Summary

By application dated 23 February 1995, Renaissance sought, pursuant to Part VI of the Act, a licence for the export of natural gas with the following terms and conditions:

Term	-	commencing on the issuance of the licence and ending on 1 November 2004
Point of Export	-	Niagara Falls, Ontario
Maximum Daily Quantity	-	79.3 10^3m^3 (2.8 MMcf)
Maximum Annual Quantity	-	28.9 10^6m^3 (1.0 Bcf)
Maximum Term Quantity	-	289.6 10^6m^3 (10.2 Bcf)
Tolerances	-	ten percent per day and two percent per year

The gas proposed to be exported would be produced from pools within Alberta and transported on the NOVA system to the Alberta border at Empress. TransCanada would then deliver the gas to the export point at Niagara Falls, Ontario. From the international border, the gas would be shipped on the National Fuel Gas Supply Corporation ("National Fuel") system and on the Transcontinental Gas Pipe Line Corp. ("Transco") system for delivery to Delmarva Power & Light Company ("Delmarva") in Wilmington, Delaware.

6.2 Gas Supply

6.2.1 Supply Sources

Renaissance will provide the gas from its corporate supply pool. The submitted supply is a non-dedicated supply, since no specific pools have been contractually dedicated to the proposed export. Further details regarding the sale of gas to Delmarva are set out in Section 6.5.

6.2.2 Reserves

In support of its application, Renaissance provided its own estimates of gas reserves for ten of its pools which, Renaissance submitted, would be adequate to provide the reserves and productive capacity needed for the proposed export to Delmarva.

Table 6-1
Comparison of Renaissance's Established Gas Reserves with the Applied-for Term Volume

10^6m^3
(Bcf)

Renaissance[1]	NEB[2]	Applied-for Volume[3]
396 (14.0)	339 (12.0)	266 (9.4)

1. As of 1 January 1995.
2. As of 31 December 1994. The Board's estimate of reserves would be approximately 29 10^6m^3 (1 Bcf) less than shown, if adjusted for production to 1 September 1995. The Board's estimate of reserves would then be 16 percent less than Renaissance's, but still 17 percent greater than the applied-for volume.
3. This represents the applied-for volume, having been reduced by deliveries to Delmarva which commenced on 1 November 1994 and will continue under short-term authorization up to the effective date of the applied-for licence (1 September 1995).

Table 6-1 shows that the Board's estimate of Renaissance's submitted gas reserves is 14 percent lower than Renaissance's estimate; however, it is 27 percent higher than the revised applied-for volume.

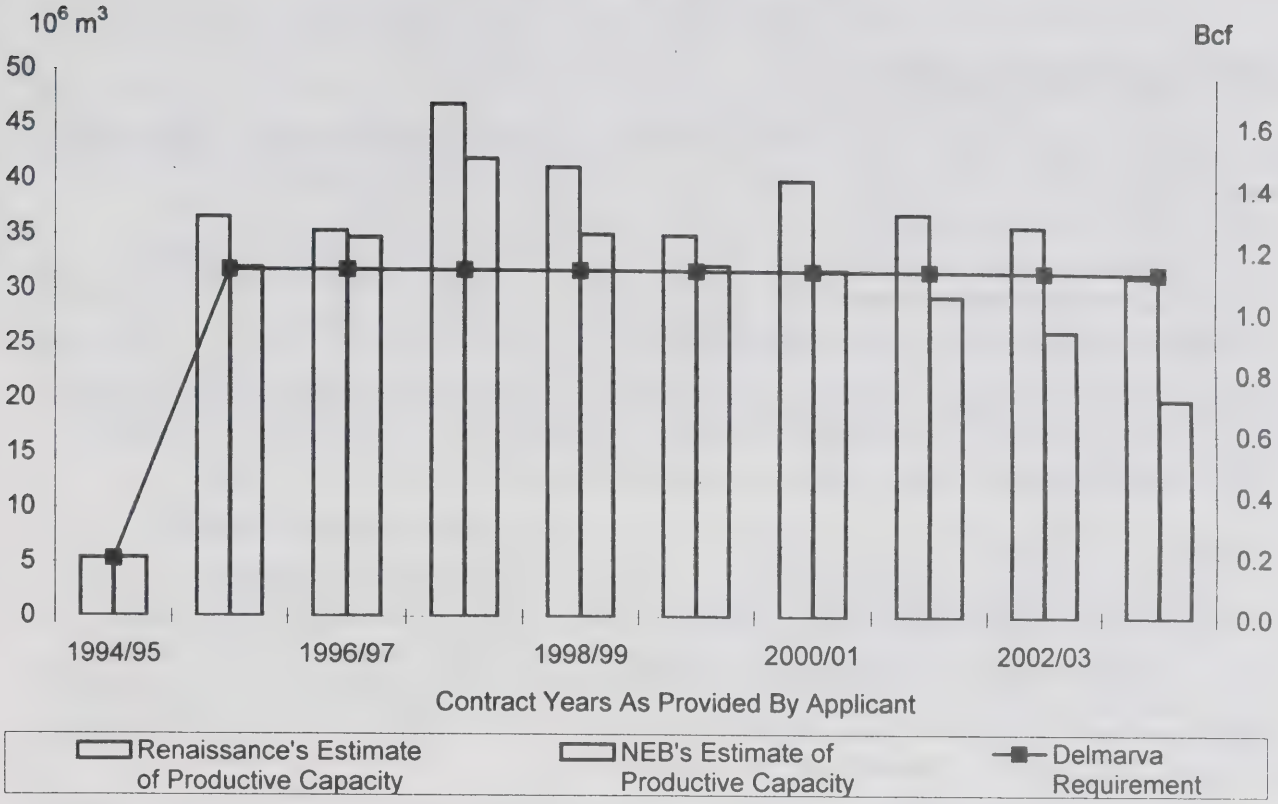
Renaissance indicated that it intends to supply the proposed export from its corporate supply pool, of which the reserves identified in the application form a small portion. Renaissance submitted limited information concerning its total corporate pool. The information submitted was a corporate supply and demand balance wherein Renaissance claimed that it has 37 534 10^6m^3 (1,325 Bcf) of reserves, as of 1 January 1995. Renaissance's corporate supply pool supports its existing long-term requirements of 14 504 10^6m^3 (512 Bcf), over the next ten years including the proposed exports.

In regard to the Board's recent Unconnected Gas Study, Renaissance indicated that the Board's study of small unconnected pools had been done in a region of Alberta which does not include any of Renaissance's land holdings. Renaissance's corporate reserves contained in unconnected pools is estimated to be 21 416 10^6m^3 (756 Bcf). Renaissance further stated that it currently has proven and producing reserves of 16 119 10^6m^3 (569 Bcf), which are more than sufficient to supply Renaissance's long-term market commitments, including Delmarva Power, through to 2005. Renaissance stated that short-term sales are only made from excess supply and that it currently has no short-term requirements over the period 1995 to 2005.

6.2.3 Productive Capacity

The Board's and Renaissance's projections of productive capacity with the Delmarva requirement are compared in Figure 6-1. Both projections show that Renaissance has adequate gas supply from the submitted reserves to meet the Delmarva requirement for the majority of the proposed export term.

Figure 6-1
Comparison of Renaissance's and NEB's Estimates of Annual Productive Capacity



6.3 Transportation

The gas proposed for export would be delivered to Empress, Alberta under Renaissance's existing firm transportation arrangements with NOVA. Renaissance would transport the gas to Niagara Falls, Ontario pursuant to a firm service transportation contract with TransCanada. Renaissance Energy (U.S.) Inc. ("Renaissance U.S.") would take possession of the gas at the international border and in turn sell it to Delmarva. Delmarva would transport the gas from the international border on the National Fuel system, under its firm transportation arrangement with National Fuel, to interconnect with the facilities of Transco. The gas would then be transported on the Transco system, pursuant to a firm transportation arrangement.

6.4 Market

Delmarva is a natural gas and electric utility in the State of Delaware. Delmarva aggregates gas supply for distribution and resale to over 90 000 residential, commercial, industrial, and transportation customers. The company has annual sales in excess of 18 Bcf and is growing at an estimated rate of 2.5 percent per year.

The proposed export would represent about six percent of Delmarva's supply requirements and be used to serve its long-term market requirements.

Renaissance stated that the gas would be taken at a minimum of 80 percent load factor for the full term.

6.5 Gas Sales Contract

Renaissance U.S. and Delmarva executed a gas purchase agreement dated 7 June 1994. The term of the sales arrangement is for ten years commencing on 1 November 1994 and ending on 1 November 2004 unless renewed by the parties after providing eighteen months notice. The agreement may be terminated by either party unless the necessary Canadian and U.S. regulatory authorizations and transportation agreements are obtained by 1 September 1995. Gas has been flowing to Delmarva under Renaissance's short-term authorization since 1 November 1994.

Renaissance U.S. will obtain its gas supply from Renaissance at the international border near Niagara Falls, Ontario, pursuant to a gas supply contract dated 1 January 1993. This agreement is intended as a flow-through arrangement for the resale contract between Renaissance U.S. and Delmarva.

The gas purchase agreement between Renaissance U.S. and Delmarva provides for a MDQ of 79.3 10^3m^3 (2.8 MMcf) and a MAQ of 80 percent of the MDQ multiplied by the number of days in the contract year. Should Delmarva fail to nominate and purchase the MAQ for two consecutive years, Renaissance U.S. has the right to either terminate the contract or reduce the MDQ accordingly. If Renaissance U.S. fails to deliver the full MDQ, Delmarva would be indemnified for the incremental costs of purchasing an alternate fuel to replace the shortfall quantity. Delmarva is responsible for the payment of demand charges, regardless of the volumes taken.

The price to be paid to Renaissance U.S. consists of three components: a monthly demand charge, a pipeline fuel and commodity charge, and a monthly commodity charge. The monthly demand charge is the sum of the demand charges on the NOVA and TransCanada systems. The pipeline fuel and commodity charge is the sum of the pipeline fuel charges and the commodity charges on the NOVA and TransCanada systems. The monthly commodity charge is an index price comprising the spot prices of gas delivered to Transco as published in McGraw Hill's "Inside FERC's Gas Market Report" less $0.50/MMBtu. If the price index ceases to be published or is no longer market responsive, the parties will meet to agree upon an alternate publication, price reference or pricing mechanism. If the parties fail to agree upon a replacement index within 60 days, the recourse will be binding arbitration.

Renaissance estimated that the price under the terms of the contract, on 1 January 1995 at the Alberta border, would have been $Cdn. 1.82/GJ ($Cdn. 1.92/MMBtu).

6.6 Status of Regulatory Authorizations

DOE/FE has authorized the import of the applied-for export volumes. Gas would be removed from Alberta under authority of AEUB removal permit GR 95-18.

6.7 Application of the Market-Based Procedure

The Alberta Greens argued that the MBP does not address the requirements of section 118. In its view, section 118 elevates the natural gas requirements of Canadians above the requirements of other parties, but the MBP makes all consumers equal. The Alberta Greens argued that the way the MBP is currently stated, there is almost no possibility of achieving preferential treatment for Canadians in regard to access to their own natural gas supplies.

6.7.1 Complaints Procedure

Renaissance noted that no complaints were filed by Canadian gas buyers about the applied-for gas exports. No parties to the hearing submitted any evidence that the terms and conditions being offered to the export buyers were more favourable than those available to domestic gas buyers.

6.7.2 Export Impact Assessment

The purpose of the EIA and the means by which it is applied to individual licence applications is explained on pages 3 and 20 of these Reasons. As noted on page 20, the Board's most recent EIA, which covers the period 1993 to 2010, concludes that the natural gas resource base in Canada is adequate to meet projected demand for both domestic and export markets over a wide range of scenarios.

Renaissance relied on the Board's most recent EIA as evidence that its exports would not cause Canadians difficulty in meeting their future energy requirements at fair market prices. Renaissance also noted that its applied-for export volumes are very small.

The Alberta Greens were of the view that evidence on the trends for gas discovery, replacement of produced reserves and gas finding costs indicate that the Board should be concerned about the future availability of gas supplies. It argued that economic gas supplies will be depleted by the year 2007 and that the requirements of Canadian gas users should be given preferential treatment over those of export markets.

GAIA argued that the Board should consider the need for achieving an environmental balance over the long term and that achievement of this objective requires the lowest possible energy transfers and lowest possible use of resources.

NLS argued that Canada is facing impending depletion of its natural gas resources and that there is an opportunity to slow down the rate of depletion to guarantee some security of gas supply for future Canadian generations. NLS argued that the licence application should be denied on the grounds that it is not in the public interest.

RMEC argued that the Board is required to examine the cumulative volumes of natural gas which are being exported, rather than focussing on the small volumes involved in a licence application such as Renaissance's. RMEC argued that exports should be assessed against the trends of gas replacement and demand, and argued that these trends indicate that gas supplies are becoming increasingly tight. RMEC also argued that the Board should examine the implications of an extrapolation of the results of

its Unconnected Gas Study to the rest of the WCSB. It suggested that if the Board were to conduct this analysis and consider Renaissance's applied-for volumes within the overall supply situation, the Board would find that it is not in the public interest to approve the application.

6.7.3 The Other Public Interest Considerations

6.7.3.1 Upstream Environmental Effects

Renaissance argued that its supply situation is the same as that put forward in the GH-3-94 proceeding. The source of the gas for the proposed export will be Renaissance's corporate pool. Renaissance submitted non-dedicated reserves for regulatory purposes only, and those submitted reserves constitute only a small part of Renaissance's corporate gas supply. Any new upstream facilities would be installed as part of the ongoing development of the corporate supply pool and no new facilities were required for the purposes of the proposed export. Renaissance noted that the contract with Delmarva states that: "A submission of reserves to the AEUB and the NEB shall not be construed as a dedication of those reserves to this contract. No reserves are being dedicated to this contract."

Alberta Greens argued that the Renaissance wells that were submitted for regulatory purposes constitute an implied dedication of supply to the applied-for export licence. This intervenor also pointed out that the Board has treated those wells in the same way it would if they were contractually dedicated. This implied dedication should be used to establish whether there will be environmental upstream effects. As only three of the wells are presently connected, Alberta Greens agreed that the connection of the remainder should become the subject of an environmental assessment to be held during a subsequent phase of the subject hearing.

Similarly, the AWA argued that the details filed on the seven specific wells establish a direct connection. RMEC relied on the arguments made in the Navy Yard Partners' application. It went on to note that the incremental and ongoing release of air emissions should be considered, as they are capable of quantification based on the volume and composition of the pipeline gas. RMEC also argued that an environmental assessment should be held.

6.8 Sunset Clause

It has generally been Board practice in issuing a gas export licence to set an initial period of time during which, if the export of gas commences, then the licence becomes effective for the full period approved by the Board. This condition in the licence is referred to as a sunset clause because the licence would expire if the export did not commence within a specified timeframe. Inclusion of the sunset clause is intended to limit outstanding licences to those for which the gas actually starts to flow within a reasonable period after the decision.

The Board questioned Renaissance concerning the acceptability of a sunset clause in the applied-for licence and it indicated that this would be acceptable. As a matter of general policy, and after questioning Renaissance, the Board has set the timeframe by which the export must commence at approximately two years from the expected commencement of the licence term.

Views of the Board

Chapter 2 of these Reasons explains that the Board's examination of an export application includes a determination of whether it is in the Canadian public interest. Section 118 requires it to "satisfy itself that the quantity of oil or gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in discovery of oil or gas in Canada". The Board is of the view that the MBP adequately fulfills the onus placed on the Board by section 118. The MBP addresses the issue of surplus through a combination of the Complaints Procedure, the EIA components of the MBP, and monitoring.

The first element of the MBP is the Complaints Procedure. Canadian users of natural gas must have an opportunity to buy gas on terms and conditions similar to those of the proposed exports. The Board notes that, since there were no complaints received, the applicant in this hearing satisfied the first requirement of the MBP.

The next component is the EIA, wherein the Board must determine whether the proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices. In this regard, the Board agrees with RMEC that it should have regard to the cumulative volumes of natural gas which are licensed for export, and that individual applications should be considered within a cumulative assessment. The Board also agrees with RMEC that it must have regard to the trends with respect to the discovery of natural gas.

The Board notes that its EIA study examines Canada's energy market in the context of the cumulative level of gas exports and it also takes into account the trends with respect to the discovery of natural gas and energy demand growth under a wide range of scenarios. The analysis in the most recent EIA indicates that high levels of gas exports are sustainable to 2010 and that no difficulties for Canadian energy users are anticipated under the various scenarios examined. The results of its subsequent Unconnected Gas Study are not considered to have a significant effect on the ultimate resources and do not invalidate the findings of the most recent EIA. Rather, they indicate that producers may have to undertake more drilling than was previously projected. Further, the Board notes that the trend with respect to natural gas prices, which are a strong indicator of resource availability, has been for prices to remain low in the face of strong demand growth.

In summary, the Board is satisfied that the export of the applied-for volumes would not cause Canadians difficulty in meeting their future energy requirements at fair market prices.

The Board notes that Renaissance relied on non-dedicated supply and submitted data on ten pools for regulatory purposes. Some intervenors sought to rely on this fact to argue that a necessary connection had been established for those seven wells on the basis of an implied dedication to the export contract. As the Board noted in GH-3-94; with non-dedicated supply, the gas to be exported is usually provided from a corporate pool with the specific pools identified only to satisfy regulatory filing requirements.

The Board finds that no useful purpose would be served by implying the dedication to the contract of the ten pools submitted. The reality is that the corporate pool will be the source of supply. No new upstream facilities are required for the purposes of the proposed export. Any new facilities constructed will be as part of the continuing development of the corporate supply pool.

As no new transportation facilities are required in Canada and the gas will be provided from the corporate pool, the Board finds that there is no necessary connection between the requirements of the export licence and any new upstream activities or facilities. As a result, no environmental assessment will be required.

The Board notes that gas has been flowing to Delmarva under short-term export authorization since 1 November 1994. The Board also notes that Delmarva must nominate at least 80 percent of the MDQ in accordance with the minimum purchase obligations in the gas purchase agreement and that Renaissance U.S. may reduce the MDQ or terminate the contract if these volumes are not taken. The Board also recognizes that the market for the gas is likely to be long-term and stable. The Board is, therefore, satisfied that there is a reasonable expectation that the volumes sought to be licensed will be taken.

The Board has reviewed the gas purchase agreement between Renaissance U.S. and Delmarva and is satisfied that it has been negotiated at arm's length.

Since Renaissance owns the gas supply supporting this export licence application, a finding of producer support is not necessary.

The Board notes that the contract price includes a demand charge component for the recovery of demand charges on the NOVA and TransCanada systems. Therefore, the Board is satisfied that there are provisions in the gas sales contracts to cover the payment of the associated transportation charges on Canadian pipelines over the term of the gas sales arrangement.

The Board reviewed all the submitted gas pools and, on this basis, decided that no reduction was necessary for unconnected pools. The Board's estimate of reserves for Renaissance's submitted gas supply exceeds Renaissance's requirement for Delmarva. Additionally, the Board's projection of productive capacity for Renaissance shows adequate supply for the majority of the term of the proposed export. As well, the Board notes that Renaissance has a valid removal permit from the AEUB. DOE/FE authorization has also been received.

The Board notes that the term of the gas purchase agreement is identical to the applied-for term of the proposed export. Transportation has been arranged on all required pipelines for the proposed export term. The Board also notes that the necessary regulatory authorizations are for a term and volume commensurate with the requested licence. The Board is, therefore, satisfied that the requested licence terms are appropriate.

Finally, Renaissance assumed a commencement date of 1 November 1994 for the purpose of determining the term volume to be included in the licence. Since the Board does not backdate its licences, and Renaissance has been flowing gas under a short-term order, the applied-for term volume must be adjusted to account for a shorter term. Assuming a commencement date of 1 September 1995, the Board has reduced the term volume by 24.1 10^6m^3 (0.8 Bcf). Renaissance agreed with the Board's proposed method of calculating this reduction in the term volume, should its application be approved.

For these reasons, the Board is satisfied that the quantity of gas proposed to be exported is in the Canadian public interest. The Board concludes that it does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada.

Decision

The Board has decided to issue a gas export licence to Renaissance, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the licence to be issued.

Chapter 7

Disposition

The foregoing chapters constitute our Decisions and Reasons for Decision in respect of those applications heard by the Board in the GH-1-95 proceeding.

K.W. Vollman
Presiding Member

A. Côté-Verhaaf
Member

J.A. Snider
Member

Calgary, Alberta
July 1995

Appendix I

Terms and Conditions of the Licences to be Issued

Amendments and addition to the Terms and Conditions of Licence GL-232 held by Brooklyn Navy Yard Cogeneration Partners, L.P.

Conditions 1(a) and 2(c) are revoked and replaced with the following:

1. (a) Subject to condition 1(b), the term of this Licence shall commence on the date of first deliveries and shall end 20 years following the commencement of the term of this Licence.

2. (c) 5 480 000 000 cubic metres during the term of this Licence.

5. Unless otherwise authorized by the Board, each of the following agreements shall remain in full force and effect, failing which the term of this licence shall end 15 years following its commencement:

   (a) The gas sales agreement between PanCanadian Petroleum Limited and Brooklyn Navy Yard Cogeneration Partners, L.P. ("Navy Yard Partners") dated 20 October 1993, as amended.

   (b) The gas sales agreement between Crestar Energy, A General Partnership and Navy Yard Partners dated 21 October 1993, as amended.

   (c) The power purchase agreements between Navy Yard Partners and Consolidated Edison Company of New York, Inc. dated 22 October 1991.

Terms and Conditions of the Licence to be Issued to Renaissance Energy Ltd.

1. (a) Subject to condition 1(b), the term of this Licence shall commence on the date of Governor in Council approval hereof and shall end on 1 November 2004.

   (b) The term of this Licence shall end on 1 September 1997 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that Renaissance may export under the authority of this Licence shall not exceed:

   (a) 79 300 cubic metres in any one day;

   (b) 28 900 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

   (c) 265 500 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

(b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Niagara Falls, Ontario.